

## Remarks/Arguments

### **A. Response to Restriction and Species Election Requirement**

#### **1. Summary of the Requirements**

The Examiner requests that Applicant elect one of the following three groups (Restriction Requirement) for further prosecution in this case:

Group I, claim(s) 1-22, drawn to an analyzer for simultaneously detecting and measuring the concentration of two related analytes.

Group II, claim(s) 23-26, drawn to a method for simultaneously detecting and measuring the concentration of two related analytes.

Group III, claim(s) 27-45, drawn to an enzymatic reaction monitoring component.

Action at page 2. The Examiner also requests Applicant to elect a single species (Species Election Requirement) from each of the following Groups A-D:

A. The type of permeable polymer from among those instantly claimed-i.e., polylysine; agarose; etc.,-see, e.g., claims 4, 30.

B. The type of electron transfer reagents from among those instantly claimed-i.e., phenylenediamine; peroxidase; ferrocene derivatives including ferrocene dicarboxylic acid and ferrocene monocarboxylic acid, - see, e.g., claims 5, 31, 36, 6, 11, 32, 37.

C. The type of buffer solution from among those instantly claimed-i.e., phosphates; Hepes; etc. - see, e.g., claims 7, 12, 33, 38.

D. The type of liquid sample from among those instantly claimed-i.e., saliva; blood; serum; - see, e.g., claims 17, 43.

Action at page 3.

## 2. Applicant's Election<sup>1</sup>

In response to the Restriction Requirement, Applicant elects Group I, which is drawn to claims 1-22 with traverse. Applicant respectfully contends that Groups I-III should be examiner because there is no additional burden—much less a “serious burden”—to search all of the claims in these Groups. *See* MPEP § 803 (explaining that “[i]f the search and examination all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.”) (internal *indicia* omitted). The Examiner fails to establish that a search of all of the claims constitutes an undue burden. Therefore, Applicant requests that the Group I-III inventions be examined and searched by the Examiner. This is especially true given that the claims comply with PCT Rules 13.1 and 13.2—*i.e.*, the claims share a special technical feature.

In response to the species election requirement, Applicant makes the following elections with traverse (see footnote 1). The elections correspond to Groups A-D on page 3 of the Action:

- A. Permeable Polymer—Applicant elects polylysine.
- B. Electron transfer Reagents—Applicant elects ferrocene derivatives.
- C. Buffer Solution—Applicant elects phosphates.
- D. Liquid Sample—Applicant elects blood.

Applicant believes that from elected Group I claims, claims 1-22 are readable on the elected species. Further, Applicant agrees with the Examiner that “[u]pon the allowance of a generic

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<sup>1</sup> Applicant's response to the Restriction and Species Election Requirements are made with traverse for two reasons. First, there is no additional burden—much less a “serious burden”—to search all of the claims in Groups I-III or the species in Groups A-D. Second, Applicant also disagrees with the Examiner that the claims lack a general inventive concept; rather the claims comply with Rules 13.1 and 13.2, and therefore the restriction and species election requirements are improper and should be withdrawn. Such arguments do not create an estoppel against Applicant and are not an admission that the restricted Groups are either patentably distinct or patentably indistinct from one another.

claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.” Action at page 4.

Applicant reserves all rights in the non-elected inventions, including the right to file one or more divisional applications covering the subject matter thereof.

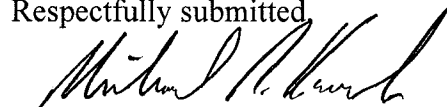
**B. Conclusion**

Applicant believes that this is a full and complete response to the Restriction and Species Election Requirement dated August 17, 2006. Applicant requests that these Requirements be withdrawn and that all of the pending claims be examined and searched for the their full scope.

Applicant is concurrently filing a Petition for a two-month extension of time concurrently with this document. The Commissioner is authorized to deduct the two-month extension of time fee of \$225.00 for small entity status applications and any additional fees under 37 C.F.R. §§ 1.16 to 1.21 required for any reason relating to the enclosed materials from Fulbright & Jaworski Deposit Account No. 50-1212/GOUD:059US.

Should the Examiner have any questions, comments, or suggestions relating to this case, the Examiner is invited to contact the undersigned Applicant’s representative at (512) 536-3020.

Respectfully submitted



Michael R. Krawzsenek  
Reg. No. 51,898  
Attorney for Applicant

FULBRIGHT & JAWORSKI L.L.P.  
600 Congress Avenue, Suite 2400  
Austin, Texas 78701  
(512) 536-3020  
(512) 536-4598 (facsimile)

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